

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case Nos.: 13-O-10542-DFM
)	(13-O-10543)
ROSE MARIE ESTRADA,)	
)	DECISION AND ORDER OF
Member No. 214510,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent Rose Marie Estrada (Respondent) was charged with two counts of misconduct. She failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on August 28, 2001, and has been a member since then.

Procedural Requirements Have Been Satisfied

On June 24, 2013, the State Bar filed and properly served the NDC on Respondent by UPS international mail to her membership records address.³ The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was later returned to the State Bar by UPS.

Thereafter, the State Bar (1) searched for alternative contact information on LexisNexis; (2) sent a copy of the NDC to Respondent's membership records address using first class mail; (3) sent copies of the NDC to Respondent at six possible alternative addresses using first class mail; and (4) sent email and a copy of the NDC to Respondent at her membership records email address.

Respondent failed to file a response to the NDC. On August 29, 2013, the State Bar filed and properly served a motion for entry of default on Respondent by UPS international mail to her membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default

³ All UPS international mailings referenced in this decision included a tracking number for confirming delivery. (Rules Proc. of State Bar, rule 5.25(B).)

was entered on October 1, 2013. The order entering the default was properly served on Respondent at her membership records address by UPS international mail. The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. She has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 28, 2014, the State Bar filed and properly served the petition for disbarment on Respondent by UPS international mail to her membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent has not contacted the State Bar after her default was entered on October 1, 2013; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has a prior record of discipline; and (4) the Client Security Fund has not made any payment resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on July 2, 2014.

Respondent has been disciplined on three prior occasions.⁴ Pursuant to a Supreme Court order filed on September 29, 2009, in case no. S175005 (State Bar Court nos. 07-O-14615, et al.), Respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for two years, including a sixty-day period of actual suspension. In this matter, Respondent stipulated to two counts of misconduct, including practicing law while not entitled and moral turpitude stemming from this same misconduct.

Pursuant to a Supreme Court order filed on August 27, 2010, in case no. S175005 (State Bar Court no. 10-PM-02950), Respondent's probation was revoked and she was suspended for

⁴ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

one year, the execution of which was stayed, and she was placed on probation for two years, including a ninety-day period of actual suspension. In this matter, Respondent was found culpable of violating the terms of her prior disciplinary probation.

Pursuant to a Supreme Court order filed on May 26, 2011, in case no. S191632 (State Bar Court no. 10-O-06765), Respondent was suspended for one year, the execution of which was stayed, and she was placed on probation for two years, including a six-month period of actual suspension. In this matter, Respondent stipulated to one count of misconduct involving her failure to comply with the terms of her prior disciplinary probation.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a Respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One - Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation) by failing to timely submit three quarterly reports, failing to submit four additional quarterly reports, and failing to timely provide proof of attendance and completion of Ethics School.

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Count Two - Respondent willfully violated Business and Professions Code section 6068, subdivision (k) (failure to comply with conditions of probation) by failing to timely submit five quarterly reports, failing to submit two additional quarterly reports, and failing to timely provide proof of attendance and completion of Ethics School.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to notify Respondent of the proceedings prior to the entry of her default, as the State Bar (a) filed and properly served the NDC on Respondent by UPS international mail, at her membership records address; (b) attempted to locate alternate contact information for Respondent by searching LexisNexis; (c) mailed copies of the NDC to Respondent at her membership records address and six possible alternative addresses; and (d) sent email and a copy of the NDC to Respondent at her membership records email address;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Rose Marie Estrada be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and

(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Rose Marie Estrada, State Bar number 214510, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: September ____, 2014

DONALD F. MILES
Judge of the State Bar Court